

BERNARD KOTEEN
ALAN Y. NAFTALIN
RAINER K. KRAUS
ARTHUR B. GOODKIND
GEORGE Y. WHEELER
HERBERT D. MILLER, JR.
MARGOT SMILEY HUMPHREY
PETER M. CONNOLLY
M. ANNE SWANSON
CHARLES R. NAFTALIN
GREGORY C. STAPLE

LAW OFFICES
KOTEEN & NAFTALIN
1150 CONNECTICUT AVENUE
WASHINGTON, D.C. 20036

July 18, 1994

RECEIVED

JUL 18 1994

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF SECRETARY

TELEPHONE
(202) 467-5700
TELECOPY
(202) 467-5915
CABLE ADDRESS
"KOBURT"

DOCKET FILE COPY ORIGINAL

Mr. William F. Caton
Acting Secretary
Federal Communications Commission
1919 M Street, N. W.
Washington, D. C. 20554

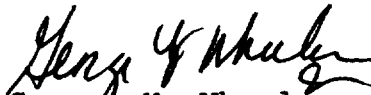
Re: Implementation of Section 309(j) of the
Communications Act - PP Docket No. 93-253

Dear Mr. Caton:

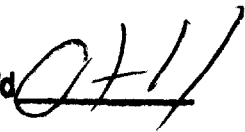
Transmitted herewith on behalf of American Paging, Inc. are an original and eleven copies of its Reply Comments to certain petitions for reconsideration of the Commission's Third Report and Order in the above-referenced proceeding.

In the event that there are any questions concerning this matter, please communicate with the undersigned.

Very truly yours,


George Y. Wheeler

No. of Copies rec'd
List A B C D E



RECEIVED

JUL 18 1994

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF SECRETARY

.....

PP Docket No. 93-253

1

}

1

1

observations that use of a simple frequency for Response Channel operations throughout a technically integrated paging system is highly advantageous technically and operationally to permit cost-effective operations.

We also agree with PageNet and Tri-State that an auction methodology should be adopted to permit aggregation of co-channel Response Channels across multiple MTA and BTA service areas. This occurs because unity paging systems do not conform to the geographic boundaries of MTAs and BTAs. An existing paging licensee can only obtain access to co-channel Response Channels if that licensee wins multiple auctions, which is so highly risky as to be prohibitive under current procedures. A company which is unsuccessful in aggregating co-channel licenses in all of the service areas needed to overlay his existing system faces severe financial penalties if he requests to bid withdrawal procedures. The cost consequences are equally hazardous if such a licensee must resort to alternative transactions to acquire needed co-channel Response Channels. In effect, the Commission's procedures create disproportionately high risks for existing businesses whose operations span multiple service areas.

We propose that the Commission adopt multiple-round ascending simultaneous bidding methodologies at least for the MTA Response Channel licensing.¹ This approach permits aggregation of co-channel licenses, avoids the need for aftermarket transactions, and

¹ All Response Channels in each MTA service area would be auctioned simultaneously.

recognizes the interdependence of market values of co-channel operations in adjacent service areas which are important to many existing paging licenses and of possible adjacent channel aggregations in single or multiple service areas contemplated by PageNet.

DISCUSSION

1. The Commission should not adopt sealed bid procedures for all Response Channel licensing.

We do not believe that the use of sealed bid procedures as adopted by the Commission, or as proposed by Tri-State adequately addresses the need for existing licensees to aggregate co-channel Response Channels in multiple MTA or BTA areas. As discussed above such procedures do not adequately address the interdependence of license values in terms of spectrum aggregation and of service area coverage.

The basic problem, which does not appear to be solvable under any licensing address which is based on fixed, predetermined geographic units such as MTAs and BTAs, is that existing paging systems did not evolve along political boundaries. Instead, paging systems developed on the basis of actual customer usage patterns. In addition, such systems have grown with very large service areas reflecting trends toward increased mobility/portability of communications needs. The Commission has recognized the public benefits of wide-area coverage and the industry trends towards such coverage in its broadband PCS, wide-area SMR and PCP exclusivity rulemaking proceedings.

We request that the Commission acknowledge the foregoing trends in this proceeding by adopting bidding proceedings which recognize interdependence factors.

2. The Commission adopt procedures which offer the existing licensees options to acquire needed Response Channel capacity across multiple service areas.

We support multiple round ascending simultaneous procedures for Response Channels because we believe access to Response Channel capacity will be an important resource for local, regional and wide-area system operators. Access to such capacity will in some cases be essential to the survival of those operators as the next generation of "messaging" services emerges. Sealed bid procedures add substantially to the risk that operators who value Response Channel licenses most will not have adequate opportunity to bid for these essential spectrum resources. Some operators may even decide that they are effectively precluded from participating in the auction and may not apply for Response Channel licensing.

Multiple round ascending bid procedures permit bidders to learn about license values, to make bids on the basis of interdependence factors and to pursue license acquisition strategies which are unique to the needs of each bidder whether that bidder is interested in local, regional or other wide-area operations.

We have proposed that if the Commission is concerned that sealed bid procedures should be retained for certain purposes, at a minimum multiple round ascending simultaneous procedures should

be adopted for MTA licensing of Response Channels. This is a compromise which would meet the needs of numerous existing licensees. Also the Commission might decide to hold the auctions for MTA Response Channels before those for BTAs and base its decision on the appropriate procedures for BTA licensing on the results of the MTA auctions.

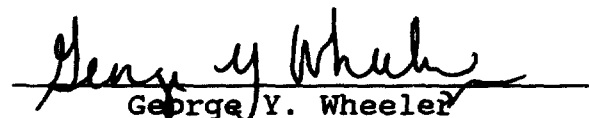
CONCLUSION

The auction procedures for Response Channels will be extremely important to the successful transition of the existing paging industry into "messaging" services. The Commission has an important opportunity to provide a fair opportunity for all existing licensees to pursue license acquisition strategies which meet the unique needs of each. Multiple round ascending simultaneous procedures best meets the needs of this existing licensee group.

Respectfully submitted,

AMERICAN PAGING, INC.

By


George Y. Wheeler

KOTEEN & NAFTALIN
1150 Connecticut Avenue, N.W.
Suite 1000
Washington, D.C. 20036
(202) 467-5700

Its Attorneys

July 18, 1994

CERTIFICATE OF SERVICE

I, Judy Cooper, a secretary in the law firm of Koteen & Naftalin, do hereby certify that on the 18th day of July, 1994, copies of the foregoing Reply were deposited in the U.S. mail, postage prepaid, addressed to the following:

Robert M. Pepper, Chief*
Office of Plans & Policy
Federal Communications
Commission
1919 M Street, N.W., Room 822
Washington, D.C. 20554

Mr. Evan Kwerel*
Office of Plans and Policy
Federal Communications
Commission
1919 M Street, N.W., Room 822
Washington, D.C. 20554

Ms. Jackie Chorney
Office of Plans and Policy
Federal Communications
Commission
1919 M Street, N.W., Room 822
Washington, D.C. 20554

Kent K. Nakamura
Office of Plans and Policy
Federal Communications
Commission
1919 M Street, N.W., Room 822
Washington, D.C. 20554

Richard S. Becker, Esq.
Becker & Madison, Chartered
1915 Eye Street, N.W., 8th
Floor
Washington, D.C. 20006

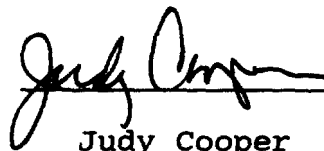
William J. Franklin, Esq.
Law Offices
1919 Pennsylvania Ave., N.W.
Suite 300
Washington, D.C. 20006-3404

Richard L. Vega, Jr.
President
Phase One Communications, Inc.
3452 Lake Lynda Drive
Suite 115
Orlando, Florida 32817

Stephen G. Kraskin, Esq.
Caressa D. Bennet, Esq.
Kraskin & Associates
2120 L Street, N.W., Suite 810
Washington, D.C. 20037

Judith St. Ledger-Roty, Esq.
J. Laruent Scharff, Esq.
Reed Smith Shaw & McClay
1200 18th Street, N.W.
Washington, D.C. 20036

By



Judy Cooper